

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

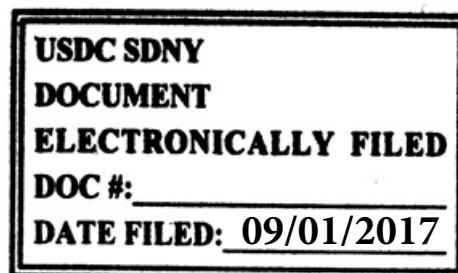
CITY OF ALMATY, KAZAKHSTAN, and BTA
BANK JSC,

Plaintiffs,

-against-

MUKHTAR ABLYAZOV, VIKTOR KHRAPUNOV,
ILYAS KHRAPUNOV, and TRIADOU SPV S.A.,

Defendants.



ORDER

1:15-CV-05345 (KHP) (AJN)

KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE

Defendant Triadou SPV S.A. (“Triadou”) has moved to compel Plaintiffs, the City of Almaty and BTA Bank (together, “Almaty/BTA”), to produce their main witness, Nicolas Bourg, for deposition in New York. Defendants Ilyas and Victor Khrapunov have joined the motion. (Docket No. 400 and 408). According to Triadou, it had agreed to take Bourg’s deposition in London, but Bourg asked to reschedule on short notice three times. Almaty/BTA have represented that Bourg is scheduled to be deposed on September 11-12 in London—a date confirmed by Bourg’s independent counsel. Triadou states in its reply that it is skeptical that this representation is any more reliable than those previously made about Bourg sitting for deposition and contends that this Court has the power to and should nevertheless compel Plaintiffs to produce Bourg, a non-party, to appear for his deposition because, it argues, Plaintiffs have control over Bourg.

It is clear that Bourg’s testimony is important and that Bourg has cooperated with Plaintiffs in the past to give statements and testimony. It also appears that notwithstanding the

prior cancellations, Bourg has now committed to be deposed on September 11 and 12 in London. In light of this representation, Triadou's motion is denied without prejudice.

Further, given Triadou's apparent agreement to take Bourg's deposition in London, the fact that Bourg resides in Europe and is a non-party, and in light of the fact that his deposition may be taken in London pursuant to the Federal Rules of Civil Procedure, there is no reason for this Court to compel his deposition in New York at this time. Plaintiffs are warned, however, that a cancellation by Bourg of the September 11-12 deposition in London will not be viewed favorably by this Court.

Triadou also has requested that it be permitted at least seven hours to examine the witness (plus additional time to account for translation), separate from any time Almaty/BTA may seek. Given that Bourg is scheduled to be deposed over two days, this Court grants Triadou's request to depose Bourg for up to seven hours.

Finally, Triadou requests that if Almaty/BTA cannot produce Bourg, that his testimony and any sworn statements be precluded from introduction at trial. This request is premature and therefore denied. Any requests concerning trial evidence should be directed to the Hon. Alison J. Nathan, who will preside over the trial in this matter.

The Clerk is directed to terminate the motions at Docket No. 400 and 408.

SO ORDERED.

Dated: September 1, 2017
New York, New York

A handwritten signature in black ink, reading "Katharine H. Parker". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

KATHARINE H. PARKER
United States Magistrate Judge